

### **REMARKS**

Applicants have received and reviewed an Office Action dated January 29, 2007. By way of response, Applicants have cancelled claims 1-12 and 16-20 without prejudice or disclaimer. Applicants reserve the right to pursue the subject matter of these claims in one or more continuation application. Applicants have amended claim 13. New claim 21 has been added. The amended claims and new claims find support throughout the application. No new matter is presented.

For the reasons given below, Applicants submit that the amended claims are in condition for allowance and notification to that effect is earnestly solicited.

#### **Rejection under 35 U.S.C. § 101**

Claim 12 was rejected under 35 U.S.C. § 101. Without acquiescing to the rejection, and solely to further prosecution of the application, Applicants have canceled claim 12, and Applicants respectfully request withdrawal of the rejection.

#### **Rejection under 35 U.S.C. § 112**

Claims 8, 10, 12 and 20 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Without acquiescing to the rejections, and solely to further prosecution of the application, Applicants have cancelled claims 8, 10, 12 and 20. As indicated above, claim 12 is canceled without prejudice. Applicants respectfully request withdrawal of the rejection.

#### **Rejection 35 U.S.C. § 102(b)**

Claims 1-4, 6-7, 9-11 and 19 were rejected under 35 U.S.C. § 102(b) as anticipated by Xu et al., U.S. Patent No. 5,916,919. Without acquiescing to the rejection and solely to expedite prosecution, Applicants have cancelled claims 1-4, 6-7, 9-11 and 19 rendering the rejection moot.

**Rejection under 35 U.S.C. § 103(a)**

Claims 1–11 and 16-20 were rejected under 35 U.S.C. § 103(a) as unpatentable over Xu et al. Applicants respectfully traverse the rejection. Without acquiescing to the rejection and solely to expedite prosecution,

Claims 13–15 were rejected under 35 U.S.C. 103(a) as unpatentable over Reiji et al., JP 01390809 (Reiji et al.). Applicants respectfully traverse the rejection.

To establish a *prima facie* case of obviousness, three basic criteria must be met:

1. There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.
2. There must be a reasonable expectation of success.
3. The prior art references, when combined, must teach or suggest all the claim limitations.

*In re Vaeck*, 947 F.2d 488 (Fed. Cir. 1991). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and must not be based on applicant's disclosure.

Reiji et al. discuss improvement of chapped skin and inflammation on external skin surfaces by applying one or more plant extracts from *Aucuba japonica*, *Firmiana simplex*, *Polygonatum odoratum*, *Pyrola japonica*, *Curcuma domestica*, *Aristolochia debilis*, *Anemone cernua*, *Xanthium strumarium*, *Patrinia scabiosifolia*, *Metaplexis japonica*, *Typha latifolia*, *Pinellia ternata*, *Paulownia tomentosa*, *Chelidonium majus*, *Forrestii Rolfe*, *Ajuga decumbens*, *Cassia nomame*, *Geum japonicum*, *Taraxacum*, *Ligularia tussilaginea*, *Solanum Melongena*, *nandina domestica*, *Euonymus alata*, *Allium tuberosum*, *Allium fistulosum*, *Allium Grayi*, *Nelumbo nucifera*, *Tribulus terrestris*, *Lycoris radiata*, *Petasites japonicus*, *Poria Cocos*, *Impatiens balsamina*, *Leonurus sibiricus*, *Citrus junos*, *Aster yornena*, *Euphorbia ebracteolata*, *Kadsura japonica*, *Hypericum perforatum*, *Pyrrosia lingua*, *Symphytum of ficinale*, and *Paederia scandens*. The extracts are obtained by refluxing or dipping the plants in a mixture of organic solvents and water, and filtering and concentrating the resulting product.

Reiji et al. do not teach Applicants' claimed subject matter. Reiji et al. do not teach a method for treating skeletal injuries, soft tissue trauma, operation cut, burn, ulcers, bone defects, or bone fractures. As indicated above, Reiji et al. disclose an external skin agent for preventing and improving chapped skin by reducing inflammation. It is well known in the art that chapped

skin is a skin injury, where the skin appears inflamed, roughened or fissured as a result of exposure to the cold. Applicants' claims are directed to a method of treating soft tissue trauma, operation cut, burn, ulcers, bone defects, or bone fractures, which are serious injuries that are pathologically different from chapped skin. For example, soft tissue trauma usually is caused by a physical injury or wound to the soft tissue from external force or violence. Applicants submit it would not be obvious in view of Reiji et al. to use the presently claimed organic extract for treating the conditions as claimed in claims 13–15.

Reiji et al. do not teach an organic extract from *Geum Japonicum thunb var.* comprising tannins comprising gemins A, B, C, D, E and F and triterpenes comprising 2-hydroxyoleanolic acid, 2-hydroxylursolic acid, 2, 19-dihydroxy-ursolic acid, 2- $\alpha$ ,19- $\alpha$ -dihydroxy-3-oxo-12-ursen-28-oic acid, ursolic acid, epimolic acid, maslinic acid, euscaphic acid, tormentic acid, and 28- $\beta$ -D-glucoside of tormentic acid. Reiji et al. do not teach an extract obtained by the method of extracting a plant of *Geum Japonicum Thunb* with an alcohol selected from the group consisting of C<sub>1</sub>-C<sub>4</sub> alcohols, drying the extract into a dried powder, successively extracting the powder with C<sub>6</sub> alkane, EtOAc and an alcohol selected from the group consisting of C<sub>1</sub>-C<sub>4</sub> alcohols, and drying the extract into a dried powder. Thus, Reiji et al. do not teach Applicants' claimed subject matter.

There is no motivation or suggestion in the teaching of Reiji et al. to use Applicants' methods, nor is there any reasonable expectation of success in reaching Applicants' invention based on the teachings of Reiji et al. As is noted above, without evidentiary support it cannot be said that one of ordinary skill would be motivated to use Applicants' chemical methods; nor can it be said that there is a reasonable expectation of success in reaching the combination of isolated chemicals of Applicants' invention.

Accordingly, based on the foregoing differences, Applicants respectfully submit that the cited references do not render the presently claimed invention obvious, and withdrawal of this rejection is respectfully requested.

**SUMMARY**

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

MERCHANT & GOULD P.C.

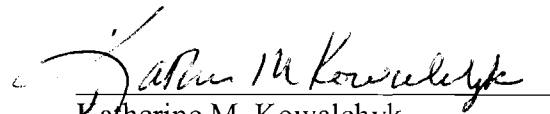
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May 29, 2007



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